

## REMARKS

Applicants thank the Examiner for his careful review of the application. Applicants respectfully request reconsideration of the present case in view of the following remarks. Claims 61-73, 75-85, and 87-89 are currently pending. Claims 74 and 86 have been withdrawn without prejudice. No other claims have been amended. No new matter has been added.

### Election / Restriction

In the Office Action dated November 11, 2004, the Examiner referenced a telephone conversation in which a provisional election was made by Applicants to prosecute the invention of Species I. Claims 74 and 86 are withdrawn without prejudice from further consideration by the examiner under 37 CFR § 1.142(b). Applicants reserve the right to reintroduce these claims upon allowance of a generic claim upon which these claims depend.

### Claim Rejections under 35 U.S.C. § 102

Claims 61, 63, 68, 71, 72, 73, 75, 76, 77, 78, 83, 85, 86, 88, and 89 are rejected under 35 U.S.C. § 102(e) as being anticipated by Lloyd et al., US 6,080,106. Applicants respectfully traverse the rejection.

Independent claims 61 and 77 require that the processing computer issues an alert if it is determined that caregiver intervention is required. This is specifically noted in the specification on page 27, which indicates that the system may issue an exception based on the responses of the patient, for example based on a score tallied from those responses. Based on that information, the system will prompt the medical professional caregiver to take further action in caring for the patient.

Applicants assert that Lloyd does not disclose and in fact teaches away from an element requiring the processing computer to issue an alert if caregiver intervention is required. Rather, Lloyd discusses in column 7 the interaction between the patient and the device, as well as direct interaction with the medical professional caregiver ("while connected to the monitoring staff's computer, the answers and data are examined by the monitoring staff"). Lloyd discloses, and the Examiner notes in the Office Action dated November 17, 2004, that any alert generated

regarding a patient's condition originates from the caregiver, not the monitoring system ("issues an alert via the nurse...").

Because Lloyd does not disclose issuing an alert based on a system determination that caregiver intervention is required, it does not anticipate independent claims 61 and 77. Furthermore, Lloyd provides no teaching that would have suggested the desirability of modification to issue alerts from the system. Rather, Lloyd discloses a system that acts as a communication link, transmitting measured and queried data to a caregiver without making any determination of the need for intervention.

For at least this reason, rejection of independent claims 61 and 77 is improper. Therefore Applicants respectfully request reconsideration and withdrawal of the rejection of these claims.

#### Allowability of All Dependent Claims

Claims 62-73, 75-76 are dependant on allowable claim 61. Claims 78-85 and 87-89 are dependent on allowable claim 77. For at least these reasons, claims 62-73, 75-76, 78-85, and 87-89 are allowable as well. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of the dependent claims.

#### Claim Rejections Under 35 U.S.C. § 103

Claims 62, 64-67, 69, 70, and 79-83 are rejected under 35 U.S.C. § 103(a). Applicants respectfully traverse this rejection. As stated above, claims 62, 64-67, 69, and 70 are dependant on allowable claim 61 and claims 79-83 are dependant on allowable claim 77. For at least these reasons, claims 62, 64-67, 69, 70, and 79-83 are allowable as well. Therefore, applicants respectfully request reconsideration and withdrawal of the rejection of these claims.

### Conclusion

Claims 61-73, 74-85, and 87-89 remain pending in the application. These claims are allowable for at least the reasons set forth above. This amendment is believed to be responsive to all points raised in the Office Action. Accordingly, Applicants respectfully request prompt reconsideration, allowance, and passage of the application to issue. Should the Examiner have any questions or concerns, the Examiner is urged to contact the undersigned by telephone at the number below to expeditiously resolve this matter.



Date: 5/16/2005

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

A handwritten signature in black ink, appearing to read "Erik G. Swenson". The signature is written over a horizontal line.

Erik G. Swenson  
Reg. No. 45,147